

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

NATIONAL RIFLE ASSOCIATION OF  
AMERICA,

*Plaintiff and Counter-Defendant,*

and

WAYNE LAPIERRE,

*Third-Party Defendant,*

v.

ACKERMAN MCQUEEN, INC.,

*Defendant and Counter-Plaintiff,*

and

MERCURY GROUP, INC., HENRY  
MARTIN, WILLIAM WINKLER,  
MELANIE MONTGOMERY, AND JESSE  
GREENBERG,

*Defendants.*

Case No. 3:19-cv-02074-G

**ACKERMAN MCQUEEN, INC.'S STATUS REPORT**  
**PURSUANT TO COURT ORDER DATED JANUARY 19, 2021 (ECF 196)**

Pursuant to the Court's January 19, 2021 Order (ECF No. 196), Defendant/Counter-Plaintiff Ackerman McQueen, Inc. and Defendants Mercury Group, Inc., Henry Martin, William Winkler, Melanie Montgomery, and Jesse Greenberg (collectively, "**AMc**") file this *Status Report* (the "**Report**") relating to the National Rifle Association of America's ("**NRA**") recent bankruptcy filing. In sum, certain claims are stayed while others are not, and AMc requests the Court abate this action for a short period to allow AMc to apprise the Court of additional developments in the bankruptcy.

**I. THE NRA’S BAD-FAITH BANKRUPTCY FILING**

On January 15, 2021, the NRA filed a bankruptcy petition for Chapter 11 reorganization. In a letter to its five million members, the NRA freely admits that it does not actually need the bankruptcy court’s protection:

**The plan aims to streamline costs and expenses, proceed with pending litigation in a coordinated and structured manner, and realize many financial and strategy advantages.**

**The NRA is not ‘bankrupt’ or ‘going out of business.’ The NRA is not insolvent. We are as financially strong as we have been in years.<sup>1</sup>**

The NRA stated unequivocally that it is “financially as strong as [it has] been in years” and is merely “DUMPING New York” to “seek protection from New York officials.”<sup>2</sup> The NRA stated elsewhere, “[t]his action is necessitated primarily by one thing: the unhinged and political attack against the NRA by the New York Attorney General.”<sup>3</sup> Pursuant to the NRA’s well-planned strategy, the NRA gave the same excuse to the bankruptcy court in justifying its bankruptcy filing on January 15, 2021.<sup>4</sup> There are several serious problems regarding the NRA’s bankruptcy filing that will be determined shortly by the presiding bankruptcy judge, but may also be decided by this Court, which holds original jurisdiction over the NRA’s bankruptcy case. Thus, AMc is seeking the appropriate relief with the bankruptcy court and believes that the NRA bankruptcy should be

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<sup>1</sup> See Ex. A (Letter to NRA Members) (emphasis added).

<sup>2</sup> See *id.* (emphasis in original). Charles Cotton, the NRA’s First Vice President, explained the same when he said the bankruptcy was “motivated by litigation and regulatory scrutiny in what he called ‘corrupt New York’ – not financial concerns. ‘We’ve got to get in a state where we can operate without that kind of undue weaponizing of governmental agencies, and frankly to get all the litigation in a place where we’ve got an even shake,’ Cotton told the Associated Press.” See Ex. B article quoting Charles Cotton) [<https://apnews.com/article/new-york-gun-politics-coronavirus-pandemic-texas-cbe5845c17e18eed8679d6daec75ff75>]

<sup>3</sup> See Ex. C at 3-4 (NRA Question & Answer). See also Brewer Firm news page [<https://www.brewerattorneys.com/news>].

<sup>4</sup> See Ex. D at 12:7-9 (First Day Motions Hr’g Tr., Jan. 20, 2021) (emphasis added).

no more than a temporary speed bump in the otherwise just and timely adjudication of this matter in accordance with the current scheduling order and trial setting.

## **II. THE CURRENT STATUS OF THE PARTIES' CLAIMS**

### **A. Claims Asserted By AMc Against the NRA Are Presently Stayed.**

Pursuant to 11 U.S.C. § 362(a), claims asserted against a debtor are stayed automatically once the debtor files its bankruptcy petition. The AMc counterclaims against the NRA are the only claims in this matter that are truly “against the debtor,” as contemplated under section 362(a) of the Bankruptcy Code. Accordingly, the claims AMc asserted against the NRA are automatically stayed at this time. Although AMc admits that these claims are subject to section 362(a)’s automatic stay provision, this stay may soon be terminated (based on dismissal) or lifted for “cause,” including bad faith.<sup>5</sup> Indeed, the presiding bankruptcy judge in the NRA case, Judge Hale, may dismiss the entire case for the NRA’s bad faith *sua sponte*. AMc believes the facts clearly establish the standards to lift the stay and/or dismissal of the case and therefore will seek appropriate relief from the bankruptcy court.

AMc reserves the right to present at a later date as requested or permitted by this Court supporting law and argument for why the stay should be lifted, whether by this Court or the bankruptcy judge.

### **B. Claims Asserted By The Debtor or Against Non-Debtors Are Not Stayed.**

Under the plain language of section 362(a) of the Code, the automatic stay applies only to claims “against the debtor” by creditors.<sup>6</sup> The purpose of the stay is to provide a debtor with a

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<sup>5</sup> 11 U.S.C. § 362(d).

<sup>6</sup> 11 U.S.C. § 362(a).

“breathing spell” from creditors by staying collection efforts.<sup>7</sup> Courts in the Fifth Circuit and the Northern District have interpreted Section 362(a) as refusing to stay a debtor’s offensive claims.<sup>8</sup> Irrespective of setoff issues—which should be preserved—while the automatic stay applies to claims brought *against* a debtor, it does not necessarily apply to claims brought *by* a Chapter 11 debtor acting as a debtor-in-possession, pursuant to Sections 1107 and 1108 of the Bankruptcy Code. Thus, the NRA’s claims are not technically stayed, although their prosecution would certainly invite the bankruptcy court to lift the automatic stay to allow AMc to preserve and prosecute its counterclaims.

For similar reasons, the automatic stay generally does not extend to claims against any third-party non-debtor. Therefore, AMc’s claims against LaPierre should not be stayed.

### **III. AMC REQUESTS A SHORT ABATEMENT**

Given the facts and circumstances surrounding the filing of the NRA’s bankruptcy, AMc is on the verge of raising numerous issues with the bankruptcy court. These issues, and the relief sought as a result, would allow this matter to proceed. However, until that determination is made and given the current stay of AMc’s counterclaims against the NRA, AMc respectfully requests that the Court abate all claims and pending deadlines in this action until March 15, 2021 because of the risks and inefficacies associated with piecemeal litigation, and allow AMc to provide this Court with an update on the status of the bankruptcy no later than March 12, 2021. To be clear, the only upcoming deadlines AMc requests to be abated are the February 12, 2021 ADR deadline

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<sup>7</sup> *Matter of Commonwealth Oil Refining Co., Inc.*, 805 F.2d 1175, 1182 (5th Cir. 1986).

<sup>8</sup> See *Matter of U.S. Abatement Corp.*, 39 F.3d 563, 568 (5th Cir. 1994) (holding that “a debtor’s offensive claims are not subject to the automatic stay”); *Hall v. U.S. Bank*, No. 3:17-CV-2802-N, 2019 U.S. Dist. LEXIS 65735, at \*7 n.1 (Feb. 26, 2019) (ruling on defendant’s motion for summary judgment because plaintiffs’ claims were not stayed by suggestion of bankruptcy); *Sheets v. Wells Fargo Bank, N.A.*, No. 3:12-CV-4534-N, 2013 U.S. Dist. LEXIS 160266, at \*7 n.1 (N.D. Tex. Sep. 11, 2013) (ruling on a motion to dismiss on bankrupt plaintiff’s affirmative claims).

and the February 17, 2021 deadline to amend pleadings and add additional parties, which was recently extended pursuant to the parties' Joint Stipulation and the Court's January 19, 2021 Order.<sup>9</sup>

More specifically, due to the extensive overlap of factual issues among the parties' claims, if AMc is forced to defend itself against the NRA's affirmative claims without simultaneously presenting its own counterclaims, AMc will be severely prejudiced in its ability to later pursue those counterclaims because of *res judicata*, collateral estoppel, or inconsistent rulings that may result.

As this Court is aware, AMc has been defending this action effectively since April 2019 when the NRA first instituted in Virginia what eventually ballooned into this action. More than a fifteen (15) depositions have been taken and hundreds of thousands of pages of discovery have been exchanged and reviewed.

The NRA has been strategizing how to maneuver around several lawsuits (and an arbitration), including by pursuing multidistrict litigation. Specifically, on November 10, 2020, the NRA filed a motion to consolidate four cases (all of which are unrelated for purposes of consolidation) in the Northern District of Texas as part of a multi-district litigation. A hearing was held on the NRA's motion to consolidate on January 28, 2021, and AMc anticipates the panel to issue a ruling denying the NRA's motion to consolidate at any point. Despite the fact that the NRA itself initiated most of this litigation against various parties and after facing challenges from all opposing parties, the NRA changed its mind and seems to have abandoned that strategy.

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<sup>9</sup> ECF 174; ECF 195.

For the first time, the NRA appears to have realized that its attempt to feign ignorance before the NYAG by blaming third-parties in various litigation for its own failures and malfeasance was a failure. Numerous lawsuits and tens of millions of dollars in legal fees later, the NRA decided that the scorched-earth litigation strategy against multiple bystanders may not actually be best or most efficient approach to market itself and/or address the NYAG's enforcement action. The NRA thus elected to file for Chapter 11 bankruptcy on January 15, 2021, attempting to convince its members that the bankruptcy will allow it to consolidate all of the various litigation it has initiated or caused. Indeed, the NRA's counsel cited the opposed multi-district litigation as a reason it considered in filing bankruptcy.<sup>10</sup>

In short, for nearly two years, AMc (the true plaintiff in this litigation) has been taking the appropriate steps to move this case along and eagerly proceed to trial in September 2021, while the NRA has conversely been attempting to delay the litigation. Considering AMc's efforts expended over the last several years (across a number of forums and a number of actions, as required by the NRA's litigation) and the gamesmanship at play, AMc believes that continuing the September 2021 trial setting at this time would be premature and would reward the NRA's litigation tactics. AMc implores the Court to maintain the trial setting until at least after receiving the proposed status report on March 12, 2021 in order to allow AMc to provide the Court with an update on the bankruptcy proceedings.

With a trial setting in the third quarter of this year and a discovery deadline in June, there is no prejudice or undue harm to any party in maintaining the trial setting until receiving further instruction from the bankruptcy court, which advice should be forthcoming shortly. Conversely,

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<sup>10</sup> See Ex. D at 12:10-23 (First Day Motions Hr'g Tr., Jan. 20, 2021).

vacating the September 2021 trial setting would force AMc to expend more resources in further dragging out this case when it is ready to bring it to trial.

Dated: January 29, 2021

Respectfully submitted,

/s/ Brian E. Mason

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MARTIN, JESSE GREENBERG,  
WILLIAM WINKLER, AND MELANIE  
MONTGOMERY**

**CERTIFICATE OF SERVICE**

I hereby certify that on Friday, January 29, 2021, a true and correct copy of the foregoing document was served upon counsel of record in accordance with the Federal Rules of Civil Procedure.

/s/ Brian E. Mason

Brian E. Mason



Friday, Jan. 15, 2021

## **Dear NRA Members & Supporters:**

Today, the NRA announced a restructuring plan that positions us for the long-term and ensures our continued success as the nation's leading advocate for constitutional freedom – free from the toxic political environment of New York.

The plan can be summed up quite simply: We are DUMPING New York, and we are pursuing plans to reincorporate the NRA in Texas.

## **EXHIBIT A**

To facilitate the strategic plan and restructuring, the

Court for the Northern District of Texas, Dallas Division. As you may know, chapter 11 proceedings are often utilized by businesses, nonprofits and organizations of all kinds to streamline legal and financial affairs.

Under the plan, the NRA will continue what we've always done – confronting anti-gun, anti-self-defense and anti-hunting activities and promoting constitutional advocacy that helps law-abiding Americans. Our work will continue as it always has. No major changes are expected to the NRA's operations or workforce.

**Importantly, our plans do not impact your membership at any level.**

NRA supporters will continue to enjoy all their full member benefits – from new members to Life Members to Benefactor Members. We will continue to publish and deliver your magazines. We will continue to train Americans and teach them firearm safety. We will continue to teach hunter safety. But most importantly, we will continue to fight for your freedom and the freedom of all Americans – as we

The plan aims to streamline costs and expenses, proceed with pending litigation in a coordinated and structured manner, and realize many financial and strategic advantages.

You know that our opponents will try to seize upon this news and distort the truth. Don't believe what you read from our enemies. The NRA is not "bankrupt" or "going out of business." The NRA is not insolvent. **We are as financially strong as we have been in years.**

But they know today's announcement makes us bigger, stronger and more prepared for the fight for freedom.

We are leaving the state of an attorney general who, just a few months ago, vowed to put us out of business through an abuse of legal and regulatory power. In fact, the gross overreach of the New York Attorney General and New York Governor has been resoundingly criticized by powerful national groups like the ACLU and a host of prominent legal scholars.

**Subject to court approval, the NRA is pursuing**

## **NRA Members and the site of our 2021 Annual Meeting being held in Houston.**

Texas values the contributions of the NRA, celebrates our law-abiding members, and joins us as a partner in upholding constitutional freedom.

Under this plan, we seek protection from New York officials who illegally abused and weaponized the powers they wield against the NRA and its members. You can be assured the Association will continue the fight to protect your interests in New York – and all forums where the NRA is unlawfully singled out for its Second Amendment advocacy.

## **This plan represents a pathway to opportunity, growth and progress.**

This is the most transformational moment in the history of the NRA. And it involves all of you.

The NRA will continue to promote its Second Amendment advocacy, sponsor firearms training, and work with its network of instructors and volunteers in furtherance of its mission. This plan actually streamlines all of the NRA's activities and

improves our operational processes.

I know we have welcomed many of you to our headquarters in Fairfax, Virginia. We have no immediate plans to relocate, but we are forming a special committee to explore our strategic options in this regard. We want to determine if there are advantages to relocating our HQ operations to another state. I have asked our leadership team to explore all options that benefit the NRA and its members.

What's most important is leading the fight for Second Amendment freedom and serving our members. **We will do that from anywhere that works best for you and for our cause.**

All membership dues and financial donations will be fully dedicated to supporting our operations and public advocacy. This plan actually improves our business. It protects us from costly, distracting and unprincipled attacks from anti-2A politicians aimed at attacking the NRA because we are a potent political force. We know that the gun ban lobby will never stop – fueled by a hatred of your freedoms and by wealthy benefactors. **Our plan is the best way to confront them.**

We are now prepared for a better future. In fact, to me, it feels like the dawn of a new day.

We are revitalized, well-positioned, and steadfast in our commitment to fight for you. To learn more, please visit [www.nra.org/forward](http://www.nra.org/forward).

Thank you for your unwavering spirit and being part of the NRA's future. Both hold incredible promise for our country – and the freedoms in which it believes.

A handwritten signature in black ink that reads "Wayne LaPierre". The script is fluid and cursive, with the first letters of "Wayne" and "LaPierre" being capitalized and prominent.

Wayne LaPierre

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## NRA declares bankruptcy, plans to incorporate in Texas

AP [apnews.com/article/new-york-gun-politics-coronavirus-pandemic-texas-cbe5845c17e18eed8679d6daec75ff75](https://apnews.com/article/new-york-gun-politics-coronavirus-pandemic-texas-cbe5845c17e18eed8679d6daec75ff75)

January 15, 2021



### ADVERTISEMENT

By PAUL J. WEBER and MICHAEL R. SISAK January 15, 2021

FILE - This Feb. 29, 2020 file photo, National Rifle Association Executive Vice President and CEO Wayne LaPierre speaks at Conservative Political Action Conference, CPAC 2020, at the National Harbor, in Oxon Hill, Md. Houston. The National Rifle Association announced Friday, Jan. 15, 2021, it has filed for bankruptcy and will seek to incorporate the nation's most politically influential gun-rights group in Texas instead of New York. (AP Photo/Jose Luis Magana, File)

AUSTIN, Texas (AP) — The National Rifle Association announced Friday it has filed for bankruptcy protection and will seek to incorporate the nation's most politically influential gun-rights group in Texas instead of New York, where a state lawsuit is trying to put the organization out of business.

The announcement came months after New York Attorney General Letitia James sued the NRA, seeking its dissolution over claims that top executives illegally diverted tens of millions of dollars for lavish personal trips, no-show contracts for associates and other questionable expenditures.

#### ADVERTISEMENT

The coronavirus pandemic has also upended the NRA, which last year laid off dozens of employees. The group canceled its national convention and scuttled fundraising. The NRA's bankruptcy filing listed between \$100 million and \$500 million in assets and between \$100 million and \$500 million in liabilities. Still, the NRA claimed in announcing the move that the organization was "in its strongest financial condition in years."

The NRA filed for Chapter 11 bankruptcy in federal court in Dallas and said it planned to incorporate in Texas, where records show it formed a limited liability corporation, Sea Girt LLC, in November 2020. Sea Girt LLC made a separate bankruptcy filing Friday, listing few assets and fewer than \$100,000 in liabilities.

In its filing, the NRA said its longtime leader, Executive Vice President Wayne LaPierre, made the decision to file for bankruptcy protection in consultation with a committee of three NRA officials formed in September to oversee its legal strategies. The NRA board voted Jan. 7 to clarify LaPierre's employment agreement, giving him the power to "reorganize or restructure the affairs" of the organization.

"The move will enable long-term, sustainable growth and ensure the NRA's continued success as the nation's leading advocate for constitutional freedom – free from the toxic political environment of New York," the NRA said in a statement.

In an interview, NRA board member Charles Cotton made clear that the bankruptcy filing was motivated by litigation and regulatory scrutiny in what he called "corrupt New York" – not financial concerns.

"We've got to get in a state where we can operate without that kind of undue weaponizing of governmental agencies, and frankly to get all the litigation in a place where we've got an even shake," Cotton told The Associated Press.

Texas Gov. Greg Abbott, a Republican, quickly welcomed the news, tweeting: "Welcome to Texas – a state that safeguards the 2nd Amendment." The NRA said it has more than 400,000 members in Texas and plans to hold its annual convention in Houston later this year.

Shortly after the announcement, James said she would not allow the NRA to "evade accountability" or oversight. The Democrat's lawsuit last year highlighted misspending and self-dealing claims that have roiled the NRA and LaPierre in recent years – from hair and makeup for his wife to a \$17 million post-employment contract for himself.

“The NRA’s claimed financial status has finally met its moral status: bankrupt,” James said.

Adam Skaggs, chief counsel at the Giffords Law Center to Prevent Gun Violence, called the bankruptcy filing “a transparent attempt to evade (James’) campaign to hold the NRA and its corrupt leaders accountable.”

Cotton said the allegations in James’ lawsuit will be proven false. He said he expects LaPierre to remain at the helm of the reconstituted NRA, praising his popularity with members and proficiency at raising money for the organization.

“Wayne leaving would be a bigger blow to the organization than was the illness and death of Charlton Heston,” Cotton said.

The gun-rights group boasts about 5 million members. Though headquartered in Virginia, the NRA was chartered as a nonprofit in New York in 1871 and is incorporated in the state. Going forward, the NRA said a committee will study opportunities to relocate segments of its operations to Texas and elsewhere.

Cotton declined to comment when asked if Sea Girt, which shares the name of a New Jersey firing range where the NRA began holding annual competitions in 1892, was formed as a part of a plan to facilitate the bankruptcy filing in Texas.

In recent years, the NRA’s relationship with New York has increasingly soured.

In 2018, the organization sued Gov. Andrew Cuomo, claiming a “political vendetta” was behind a state financial watchdog’s probe of whether it broke state laws by marketing an insurance program to gun owners. In November, the NRA agreed to pay \$2.5 million and accept a five-year ban on marketing insurance in the state.

In response to James’ lawsuit, the NRA countersued with claims her actions were motivated by hostility toward its political advocacy, including comments she made while running for attorney general in 2018 that the NRA is a “terrorist organization.”

The NRA’s largest creditor, owed \$1.2 million, is the organization’s former advertising agency, Ackerman McQueen. The NRA sued the company in 2019, alleging overbilling, and said in Friday’s bankruptcy filing that the debt owed is disputed. The lawsuit is pending.

In the New York lawsuit, Ackerman McQueen was accused of aiding lavish spending by LaPierre and other NRA executives by picking up the tab and then sending a lump sum bill to the organization for “out-of-pocket expenses.”

“No financial filing can ever shroud the moral bankruptcy of Wayne LaPierre and his wife and their lap dogs on the NRA board,” said Bill Powers, an Ackerman McQueen spokesperson and former public affairs director for the NRA.

Court records also show more than \$960,000 owed to Membership Marketing Partners LLC, a firm that lists its headquarters at the same address as the NRA. Another \$200,000 is owed to Speedway Motorsports, the North Carolina-based company that owns and operates NASCAR tracks, according to the records.

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## What did the NRA announce?

This is a transformational moment for the NRA. We announced a new strategic plan called Project Freedom.

The NRA's new strategic plan involves pursuing reincorporating the Association from the State of New York to the State of Texas – home to more than 400,000 NRA members and site of the 2021 NRA Annual Meeting being held in Houston.

The NRA's restructuring plan also aims to help the NRA streamline costs and expenses, proceed with pending litigation in a coordinated and structured manner, and realize many financial and strategic advantages.

**EXHIBIT C**

organization for the future – and ensures our continued success as the nation’s leading advocate for constitutional freedom.

## **Is the NRA going “bankrupt?”**

No. In fact, this move comes at a time when the NRA is in its strongest financial condition in years.

To facilitate its reorganization, the NRA and one of its subsidiaries filed voluntary chapter 11 petitions in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division. The NRA is not insolvent.

We expect no impacts to NRA programming.

Nothing is more important to the NRA than protecting the Second Amendment rights of our law-abiding members. We will be as effective as ever in advocating for your rights, promoting firearms education and training, and engaging in public endeavors.

## **What happens to my NRA membership?**

Nothing. Your membership remains intact.

NRA supporters will continue to enjoy all their full member benefits – from new members to Life Members to Benefactor Members. We will continue to publish and deliver your magazines. We will continue to train Americans and teach them firearms safety. We will continue to teach hunter safety.

But most importantly, we will continue to fight for your freedom as we have for all these years. In fact, we are expanding our national platform.

## **Can people still join the NRA – and why should they?**

Absolutely! There could not be a more exciting time to join the NRA. We are expanding our national platform, and our future is bright and secure. We invite all law-abiding gun owners and all Americans to be part of it. [Click here to JOIN NRA!](#)

## **By filing for chapter 11, is the NRA admitting it mismanaged donor funds?**

Not at all. We have utilized all donor contributions in

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furtherance of the NRA's mission. This action is  
necessitated primarily by one thing: the unhinged  
and political attack against the NRA by the New York  
Attorney General.

A restructuring plan is a proven mechanism for  
streamlining legal and business affairs. All  
membership fees and donations will continue to be  
used in furtherance of our Second Amendment  
advocacy.

## **Can you guarantee member donations will be used to protect our Second Amendment rights?**

All donations are used for the purpose of advancing  
the NRA's mission, period.

## **Should I donate to the NRA during the chapter 11 process, or should I wait until the Association emerges from the restructuring process?**

We need your support now – as we confront a Biden  
Administration that has vowed to attack your Second  
Amendment freedoms. All donations are used in  
furtherance of our mission.

## **Will there be impacts to endowed funds?**

No. Endowed funds will still be used to support the NRA's core mission: protecting the Second Amendment.

## **When will the restructuring process be completed?**

This process begins immediately. The NRA is expected to emerge from these proceedings within the next six months.

## **What can I do to support the NRA?**

[Join today.](#) Promote our cause. Get fully engaged.

We must continue to win the fight for constitutional freedom.

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

In Re: ) **Case No. 21-30080-hdh-11**  
)  
SEA GIRT LLC, ) Dallas, Texas  
) Wednesday, January 20, 2021  
Debtor. ) 2:00 p.m. Docket  
)  
) MOTION FOR JOINT ADMINISTRATION  
) (3)

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In Re: ) **Case No. 21-30085-sgj-11**  
)  
NATIONAL RIFLE ASSOCIATION )  
OF AMERICA, ) FIRST DAY MOTIONS  
) (2, 3, 4, 5, 6, 7)  
Debtor. )  
)

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE HARLIN DEWAYNE HALE,  
UNITED STATES CHIEF BANKRUPTCY JUDGE.

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25 Proceedings recorded by electronic sound recording;  
transcript produced by transcription service.

1                   DALLAS, TEXAS - JANUARY 20, 2021 - 2:04 P.M.

2                   THE COURT: Good afternoon. This is the Bankruptcy  
3 Court in Dallas. We have two cases on my docket that are  
4 connected: Sea Girt and National Rifle Association. I had  
5 started a signup sheet, and I'll talk about that probably at  
6 the end on some housekeeping. I think probably the best way  
7 to have this first hearing, because some folks did not know  
8 about the signup sheet, is just go ahead and take appearances  
9 like we normally would. I'll start with Debtor's counsel.  
10 And the one thing that my ECRO told me, that if you're just a  
11 call-in user, in order to -- (echoing). In order to unmute  
12 yourself, you're going to need to press \*6.

13                  So, Mr. Neligan, let's start off with you and your firm  
14 members, and then we'll just take appearances from everybody  
15 else.

16                  MR. NELIGAN: Thank you, Your Honor. This is Pat  
17 Neligan. And I am here with one of my partners, John  
18 Gaither, as well as Doug Buncher, who are on the line. And  
19 we represent Sea Girt and the National Rifle Association. We  
20 also have some of our clients who have prepared and filed the  
21 declarations in support of the motions you're hearing today,  
22 and they are on as well.

23                  THE COURT: Okay. Welcome to our Court.

24                  MR. NELIGAN: Thank you, Your Honor.

25                  THE COURT: All right. I'll take other appearances.

1 MR. BUCHANAN: Your Honor, this is Tom Buchanan.  
2 I'm with the law firm of Winston & Strawn in Washington, DC.  
3 My partner David Neier is also on the line. And we represent  
4 Chris Cox, who was the number two at the NRA, and his claim  
5 relates to an arbitration claim that was set to go to trial  
6 on Monday that was stayed as a result of the filing of the  
7 bankruptcy.

8 THE COURT: Welcome to our court, sir.

9 MR. BUCHANAN: Thank you, Your Honor.

10 MR. NEIER: And Your Honor, this is David Neier.  
11 Our pro hacs are on file.

12 THE COURT: And you may participate this afternoon  
13 even though I don't think I've done any orders yet on the pro  
14 hacs that have been filed.

15 MR. NEIER: Thank you, Your Honor.

16 MR. SHEEHAN: Good afternoon, Your Honor. This is  
17 Jim Sheehan. I'm the Assistant Attorney General from the  
18 State of New York and head of the Charities Bureau. And I'm  
19 here with my colleagues Monica Connell, Emily Stern, and  
20 Stephen Thompson representing the State of New York and the  
21 People of New York.

22 We have submitted a letter to Your Honor this morning  
23 concerning our -- we are in the process of obtaining counsel,  
24 local counsel, but in the meantime we'll be appearing with  
25 your permission today.

1           THE COURT: You may appear today. For some reason,  
2 I didn't see what you sent, although my law clerks did and we  
3 had a chance just to visit about it shortly before the  
4 hearing, but know that I am at least ignorant -- I know a  
5 little bit about your letter and the attachments, but I  
6 haven't had a chance to read it.

7           MR. SHEEHAN: Thank you, Your Honor.

8           MS. YOUNG: Good afternoon, Your Honor. Liz Ziegler  
9 Young on behalf of the United States Trustee. Also present  
10 are Asher Bublick, who is a trial attorney at our office,  
11 and I believe Lisa Lambert, the Assistant United States  
12 Trustee, is also appearing telephonically.

13           THE COURT: Welcome to all of you. I'll continue  
14 taking appearances. (Pause.) Does anyone else wish to make  
15 an appearance?

16           MS. ROGERS: Good afternoon, Your Honor. Can you  
17 hear me?

18           THE COURT: I can.

19           MS. ROGERS: I apologize. I tried to make an  
20 appearance a moment ago, and I was muted. My name is Sarah  
21 Rogers. I am litigation counsel to the Debtor in a number of  
22 prepetition proceedings, including the one in New York. My  
23 pro hac application is pending, and we will be proposed  
24 special counsel to the Debtor in a number of proceedings as  
25 well. And I'm here today in case I'm needed to weigh in on

1 any of those cases.

2 THE COURT: Welcome to our court. And to the extent  
3 you need to, you can appear this afternoon without me signing  
4 your order.

5 MS. ROGERS: Thank you, Your Honor.

6 THE COURT: Well, we have a 103 people signed up for  
7 this call. Surely there's somebody else that wants to make  
8 an appearance.

9 (No response.)

10 THE COURT: All right. We also have folks that are  
11 appearing by CourtCall, but it appears that they are listen-  
12 only.

13 So, Mr. Neligan, I'm not hearing any more appearances.  
14 Did you want to go ahead and start?

15 And let me say, I and my law clerks have had a chance to  
16 read your motions and also to review the redline versions of  
17 your orders that you've filed on the docket recently. So,  
18 without further ado, do you want to start?

19 MR. NELIGAN: Certainly, Your Honor. And let me  
20 just say, I think you cut out of a few sentences before you  
21 turned the mic over to me. So --

22 THE COURT: Uh-huh.

23 MR. NELIGAN: -- I think I understood you want us to  
24 go through the redlined versions of the orders, or --

25 THE COURT: No. I'm sorry. I said that I had a

1 chance to go through the redline versions with my clerks.  
2 And I did say for the record, let me just say, that we've had  
3 a chance to review all of your motions and to visit with them  
4 a little bit in chambers. And so I think we're as prepared  
5 as we normally would be on a first day. And we have had a  
6 chance to look at the changes that you've made to the orders  
7 that you attached to your pleadings.

8 MR. NELIGAN: I appreciate that, Your Honor, and I  
9 appreciate your giving us time on your docket on what is  
10 obviously -- and always will be, on first days -- fairly  
11 short notice. And although I'm going to give an overview  
12 about the case, I will turn the hearing over to Mr. Gaither  
13 to go through some of the specific first day pleadings.

14 I will also tell you that we were able to meet with the  
15 U.S. Trustee's Office and work with, you know, both Ms. Young  
16 and the -- and Ms. Lambert on the form of the orders and some  
17 of the relief requested, and I think it's fair to say we feel  
18 comfortable with, you know, having reached agreement, I  
19 think, with them on the various matters here today.

20 And obviously recognizing that any hearing on first day  
21 pleadings is on shortened notice, we have been very careful  
22 to limit the relief we sought today to either a matter that  
23 is critical for the operations of our client, such as the  
24 wage motion, or involve simply administrative or ministerial  
25 relief, such as the motion for joint administration and

1 consolidation.

2 Some of the other matters, like the bank accounts, Mr.  
3 Gaither can go through with you the relief we're requesting  
4 and our agreement with the U.S. Trustee.

5 With that, I will tell the Court that there will be, I  
6 think, filed relatively soon some motions that deal with  
7 either operational issues or other issues that we obviously  
8 are going to need to give creditors and affected parties more  
9 notice than the 24 hours or 48 hours' notice that they get on  
10 first days, but we will file those and handle those in the  
11 ordinary course of business and work with your setting clerk  
12 on setting those. And obviously we'll set the -- what's  
13 always termed the second day hearing on some of the relief  
14 we've requested, such as utilities and other relief that we  
15 may be seeking in your court.

16 With that, Your Honor, I'd like to turn just to some of  
17 the background and discuss at least very briefly why we're  
18 here. And, you know, although I don't spend any time on  
19 social media and I've never in my entire life gotten on  
20 Twitter, I've certainly seen articles and speculation and  
21 commentary about the filing of the NRA. And to some degree,  
22 that's to be expected. It's certainly a very high-profile  
23 client.

24 But I think it is important to sort of eliminate some of  
25 the comments and what I think are mischaracterizations of the

1 press from the real reason we're here and the need for  
2 Chapter 11. And I'll start by observing that, you know, the  
3 NRA has been, at least in large parts of our country, a  
4 venerated institution. They was formed in -- the NRA was  
5 formed in 1871, it's 150 years old, and has been focused on  
6 fulfilling its mission and protecting the rights of gun  
7 owners, protecting the Second Amendment for all of our  
8 citizens, and providing gun safety and just a variety of  
9 other services to its members and to our country. And that  
10 commitment, when it was started in 1871, is still there and  
11 is going strong. And we feel very fortunate to represent the  
12 NRA in this case.

13 That said, the question is why would the NRA have to file  
14 bankruptcy? And I gather, because I didn't read the 49-page  
15 letter from the New York State Attorney General, but I  
16 understand they're asserting that somehow the NRA is running  
17 away from the regulators in New York State. And that is --  
18 that's simply false.

19 But let me go back to the fundamental issue facing the  
20 NRA and facing the decision-makers at the NRA. You've seen a  
21 brief about the background and litigation with the Attorney  
22 General in New York as well as the litigation that have been  
23 pending in Washington, DC. There is a lot of litigation  
24 arising out of an internal audit, an investigation by the NRA  
25 in 2017 and early 2018 which resulted in litigation against

1 some vendors for overbilling as well as termination of some  
2 of the employees for wrongful reimbursements and various  
3 other acts that the NRA felt warranted in terminating.

4 And, again, I'm not trying to in any way get into the  
5 specifics of any of this litigation. But it's important to  
6 understand that this is not the only litigation that the NRA  
7 is facing. There are lawsuits against the NRA around the  
8 country. Some of those lawsuits have been filed but not  
9 served, such as a wrongful death action, I understand, in  
10 Pennsylvania. There is litigation related to the Affinity  
11 insurance program, which the NRA participates in and offers  
12 to its members. There is litigation with various state  
13 agencies.

14 There have just been, especially over the last five  
15 years, a tremendous amount of an anger and an activity by  
16 people whose viewpoints are directly contrary to the NRA.  
17 And it is as a result of that my client had to look at where  
18 it is today, look at the potential litigation that might be  
19 coming down the road, and make a very hard decision.

20 As this Court knows, and we certainly as bankruptcy  
21 lawyers understand it, I've never yet met an executive who is  
22 eager to be in Chapter 11. There's -- one of my favorite  
23 lines from the musical *Fiddler on the Roof* is one from Tevye  
24 in which he says, It may not be, you know, a shame to be  
25 poor, but it's certainly no honor. And I think, you know,

1 almost every client I've ever had will tell you that, well,  
2 bankruptcy, a Chapter 11, may not be a shame or you shouldn't  
3 avoid Chapter 11 if it can offer the company an ability and a  
4 breathing spell to address some of the problems facing the  
5 company. On the other hand, let's be candid. I've never  
6 seen an executive who wants his company going into bankruptcy  
7 so they can do monthly operating reports every month.

8 In this particular case, the NRA, like a lot of  
9 companies, was facing not only current litigation, but  
10 potential litigation. And unfortunately, as the cost of that  
11 litigation and the time and effort of the management team at  
12 the NRA was spent on all this litigation, it was becoming  
13 increasingly evident that the NRA, like many other companies  
14 that have previously filed for Chapter 11, needed both the  
15 breathing spell that Chapter 11 offers and an ability to  
16 centralize this litigation and deal with it in a rational and  
17 I think organized fashion.

18 The bottom line is Chapter 11, as this Court appreciates  
19 -- and frankly, as any experienced bankruptcy lawyer  
20 appreciates -- is broad enough and flexible enough to deal  
21 with a variety of circumstances and problems facing either  
22 for-profit or nonprofit companies. You don't have to be down  
23 to the last nickel to have to file Chapter 11. In fact, I  
24 think those cases, usually those 11s end up liquidating in  
25 Chapter 7.

1       On the other hand, you'll never see a company that files  
2 just because of one or two small lawsuits. And so the issue  
3 is how can a company address the issues such as the NRA is  
4 facing today without, you know, basically having to continue  
5 and deal with the adage, death by a thousand cuts? Because,  
6 in many respects, as litigation, the cost of that litigation  
7 going forward increases, the parties -- my client looked at  
8 this and realized there had to be a way to deal with all of  
9 this litigation in a centralized forum.

10       And you should also understand, Your Honor, that prior to  
11 the Chapter 11, the lawyers for the NRA had reached out to a  
12 number of the parties, from the New York Attorney General's  
13 Office to various private parties who were in litigation with  
14 the NRA, about an MDL, a multidistrict litigation, in which  
15 all of the litigation, or all of it certainly related to the  
16 Attorney General and to the investigation and to some of the  
17 litigation against former vendors and others, would be  
18 brought in a centralized forum and resolved that way. And  
19 unfortunately, the parties, to an entity, refused. And  
20 absent being able to streamline discovery and have all of  
21 this litigation, or much of it, handled in a centralized  
22 forum, the NRA was indeed facing the adage, death by a  
23 thousand cuts.

24       The NRA -- and I want to be very clear about this, as  
25 we've set out in our pleading -- based on the amount of

1 allowed claims, at least according to our books and records,  
2 based on litigation and, you know, some of the other claims  
3 in the case, we're very comfortable that the NRA will  
4 ultimately be able to file a plan of reorganization paying  
5 creditors in full.

6 That said, I want to make very clear that -- to avoid any  
7 misunderstanding: The amount of unsecured debt in our  
8 pleadings, and probably what you've seen in maybe some  
9 articles, does not include disputed debt. If you just take  
10 some of the litigation pending today with some of the lawyers  
11 who are on this phone, that could be anywhere from \$60  
12 million on the low end potentially to over a hundred million.  
13 And that litigation does not include litigation which we  
14 anticipate may be filed or litigation which has been filed  
15 but hasn't been served.

16 And from the standpoint of the NRA, as a 150-year-old  
17 institution serving its members and serving the general  
18 American public, it is critical to our mission to continue as  
19 a going concern and continue meeting our mission and our  
20 goals. And that is why we filed the Chapter 11.

21 I think it is -- would be a mistake to try to run down  
22 and correct some of the misstatements in various articles or  
23 to get into the -- a lot of the issues and facts in the  
24 litigation with the Attorney General of New York. I do  
25 think, though, I do want to make a couple of final points.

1       The first is that the NRA is not in any way attempting to  
2       escape regulatory supervision by the New York Attorney  
3       General. We have been transparent throughout this process  
4       prior to bankruptcy, offering up our books and records, and,  
5       frankly, offering up the internal investigation the NRA did  
6       in connection with evaluating, you know, invoices and  
7       expenses that certain executives have taken and ensured they  
8       were reimbursed for which were inappropriate under the NRA's  
9       own guidelines.

10       And although there are a number of other allegations in  
11       that litigation the NRA disputes, we can deal with all of  
12       that another day. The reality is that while it is true the  
13       NRA filed through their counsel a notice and suggestion of  
14       bankruptcy in the litigation brought by the Attorney General  
15       of New York, that's going to be done in every case, just as a  
16       matter of courtesy to the courts handling the litigation.  
17       But as we've made clear, we're not afraid of the litigation  
18       in New York State and are prepared to go forward on that.

19       We also understand that a plan of reorganization, no  
20       matter how rich and how beneficial it is for creditors, still  
21       has to comply with 1129. We have to comply with applicable  
22       law, and we're prepared to do it.

23       The other point, which, again, I've seen in articles  
24       about venue, I think is, you know, something that is easily  
25       addressed. I'll just say that we're very comfortable that

1 our decision to file in Dallas complies with applicable law.  
2 This is not a bad-faith filing, and we look forward to using  
3 the Chapter 11 to resolve the litigation and to move forward  
4 to emerge out of this bankruptcy as a company domiciled here  
5 in Texas and a company that has paid its creditors as quickly  
6 as it could and hopefully in full, if at all possible.

7 With that, I will turn it over to Mr. Gaither, who will  
8 go through the specific pleadings that are on file today and  
9 the relief that we're requesting.

10 THE COURT: Thank you. Before we turn to Mr.  
11 Gaither, I think it might be appropriate to hear from any  
12 other party in interest. But I guess when I open up the  
13 floor, I do want to do it with the caveat that we are here  
14 for some pretty basic first day matters, and I agree with you  
15 that this afternoon is not going to be the day when I'm going  
16 to hear the merits of lawsuits and that sort of thing. But I  
17 do think it's fair for everybody to at least say what they  
18 feel like they need to say on the record, but to keep it  
19 relatively brief, given the relief that the --

20 MR. SHEEHAN: Your Honor, this is --

21 THE COURT: Pardon me. Pardon me. Just a second.  
22 (Echoing.)

23 THE COURT: What's happening there, Shanette?

24 Just in case you didn't hear, I'm going to let other  
25 parties in interest speak if they want to, keeping it

1 relatively brief, given the nature of the relief that you're  
2 seeking today, which are just traditional first day matters.  
3 But I do think it's fair. And I would again say, if you  
4 didn't hear on the first pass, this isn't the afternoon where  
5 we're going to try lawsuits and that sort of thing.

6 So, Mr. Sheehan, as I said, we discussed your matter some  
7 right before the hearing. I probably -- I'll put myself in  
8 the category I know enough to be dangerous about it, but I  
9 would say why don't you go ahead and touch on the position of  
10 the State of New York. But again, we won't be litigating  
11 your action this afternoon.

12 MR. SHEEHAN: Thank you very much, Your Honor. And  
13 I don't know enough to be dangerous in bankruptcy court yet.  
14 We've been -- this case was filed, obviously, Friday  
15 afternoon, and we've been educating ourselves not only on  
16 sort of the general bankruptcy issues, but the specific  
17 aspects of this case. So, I'm not here today to advocate for  
18 any result in the case, just because I don't know enough yet.

19 We are very concerned about what's the -- I listened to  
20 Mr. Neligan and I appreciate his comment that he is prepared  
21 to have the New York State litigation go forward -- very  
22 concerned about the press release the NRA issued on Friday  
23 night in connection with this petition. And what they said  
24 was, "The NRA plan, which involves utilizing the protection  
25 of the bankruptcy court, has the Association dumping New York

1 and organizing its legal and regulatory matters in an  
2 efficient forum." And that gave us a lot of concern. And  
3 the concern, Your Honor, your fate is the NRA's regulator.  
4 They elected 150 years ago to incorporate in New York State,  
5 and under governing law that means they're required to comply  
6 with the New York State regulatory system, which is very  
7 specific about what's expected from directors, from officers,  
8 and from members, and also how the organization uses its  
9 assets.

10 We have a statutory responsibility to protect those  
11 assets, to protect our intent, to assure that directors and  
12 officers carry out their fiduciary responsibilities, and we  
13 protect the charitable interests, because there's no one else  
14 to do it. Under our state law, in general, the members of  
15 the organization have a very limited ability to hold the  
16 directors responsible for things in litigation.

17 And so we conducted an investigation for a year. At the  
18 end of that investigation, we filed a complaint which has 18  
19 different counts. And it was -- included both the  
20 organization and specific senior individuals, officers and  
21 directors of the organization, current and former. And we  
22 asked for very specific relief.

23 That case was filed in August of 2020, and the -- the  
24 parties filed a motion to dismiss, which is pending and is  
25 being argued tomorrow in the Supreme Court of New York.

1 I, as I said, I don't know enough yet to be -- to be able  
2 to say what our position will be, either of the law or the  
3 facts in this case. And we'll be pursuing that in this  
4 context. But I do think it's important that the Court be  
5 familiar with the regulatory scheme and the responsibilities  
6 that we have. And we want to make sure that we -- that we  
7 are correct on the facts and the law. We did not file the  
8 complaint without very careful review and offering the NRA an  
9 opportunity to explain what they had done, which they  
10 declined.

11 So, going forward, we will obtain counsel in the Northern  
12 District to assist us, and we're doing that as quickly as we  
13 can, and we look forward to participating in the litigation  
14 in this -- in the bankruptcy proceeding.

15 THE COURT: Thank you, Mr. Sheehan.

16 Does anyone else wish to make just a brief statement on  
17 the record?

18 MS. ROGERS: Your Honor, this is Sarah Rogers,  
19 prepetition litigation counsel for the Debtor in New York.

20 THE COURT: Yes.

21 MS. ROGERS: In deference to Your Honor -- in  
22 deference to the nature of today's hearing and Your Honor's  
23 probably wise direction that we not litigate the merits of  
24 these issues, I won't purport to do that here.

25 I only want to briefly address some of the media -- some

1 of the press statements that Mr. Sheehan cites, that the NRA  
2 is dumping New York. We want to be clear that those  
3 statements, as casual though they were, don't amount to an  
4 expressed intent to elude or obstruct the particular  
5 litigation in which the oral arguments are scheduled  
6 tomorrow. We have not sought to invoke the automatic stay in  
7 that litigation. We are ready and willing to go forward.

8 But New York is a hostile environment for Second  
9 Amendment advocacy. That's no secret, and it's no accident.  
10 The NRA, over the past three years alone, has been engaged in  
11 five different adversarial proceedings with the New York  
12 State government, only one of which has involved Mr.  
13 Sheehan's office. The conduct by various organs of the New  
14 York State government that led to those proceedings has  
15 incited condemnation from constitutional scholars, from the  
16 ACLU, from 16 different state Attorneys General. And so when  
17 the NRA makes public statements about reorganizing itself in  
18 a jurisdiction where it will receive fair treatment, those  
19 aren't veiled statements that we intend to evade or halt Mr.  
20 Sheehan's specific actions. They are statements about the  
21 NRA's general posture in New York and its desire to  
22 reorganize and gain a fresh start in a jurisdiction that has  
23 welcomed us with open arms, in a jurisdiction where we have  
24 deep longstanding roots and a bright future.

25 THE COURT: Thank you, Ms. Rogers.

1 Does the United States Trustee have any comment? I  
2 assume that you all have worked with Mr. Neligan on the form  
3 of the orders, Ms. Young. Is that right?

4 MS. YOUNG: That is correct, Your Honor. And I was  
5 just going to state briefly: We do believe that there are  
6 some agreements that we've reached that we'll address when we  
7 take up each of the individual motions that the Debtor is  
8 going to be presenting. But we do have general agreements on  
9 all of the relief that the Debtor has requested here today,  
10 and we have worked with the Debtor and they have worked with  
11 us to include language in those orders.

12 THE COURT: Thank you very much. Thanks for doing  
13 that. That makes my life a little bit easier, too, when you  
14 all do that.

15 Let me ask one more time. Does anyone else wish to make  
16 a brief statement before we move into the first day matters?

17 All right. Mr. Gaither, you have the floor.

18 MR. GAITHER: Good afternoon, Your Honor. Can you  
19 hear me okay?

20 THE COURT: I can. Thank you.

21 MR. GAITHER: Always a pleasure to be back in your  
22 court, Your Honor. I hope the Court is well, and hopefully  
23 we can do this in person before this case is over.

24 THE COURT: I do, too.

25 MR. GAITHER: At the outset, I will say I appreciate

1 Ms. Young's comments. I have been on the phone and working  
2 via email with Ms. Young for the past 24 hours, and I want to  
3 express my appreciation for their willingness to work with us  
4 on several matters. We do have, I think, agreements. We  
5 will continue to work with them. We're committed to  
6 addressing any of the concerns they have as they relate to  
7 our first day motions.

8 And so I will point those out to the Court as we go  
9 through the motions, and obviously Ms. Young can chime in as  
10 necessary. But it's my understanding we're going forward on  
11 a consensual basis today, Your Honor.

12 At the outset, I would like to direct the Court to three  
13 first day declarations, or declarations in support of our  
14 first day pleadings that we filed. Those are the  
15 declarations of Shawn Soto at Docket No. 10. Ms. Soto is the  
16 human resources/information systems/benefits and payroll  
17 manager at the NRA, and she offers testimony in support of  
18 our wages, employee benefits, and payroll motion.

19 The second is the declaration of Mr. Robert Owens at  
20 Docket 11. He is the chief fiscal officer of the Institute  
21 for Legislative Action within -- which is a division within  
22 the NRA. He offers testimony in support of our cash  
23 management and wages motion.

24 Finally, we have the declaration of Ms. Sonya Rowling.  
25 That's at Docket 12. She is the director of accounting

1 operations and financial reporting for the NRA, and offers  
2 testimony in support of our cash management motion, motion to  
3 pay prepetition taxes, and our -- a portion of our wages  
4 motion, Your Honor.

5 Each of Ms. Soto, Mr. Owens, and Ms. Rowling are in  
6 attendance at today's hearing. They are available to be  
7 cross-examined.

8 If there is no objection, Your Honor, as is our usual  
9 procedure, I would ask that the Court enter their -- I would  
10 proffer their testimony and ask that the Court enter their  
11 declarations into evidence in support of our first day  
12 motions.

13 THE COURT: Anybody have any objections to these  
14 declarations coming into evidence for these hearings only?

15 All right. 10 --

16 MR. SHEEHAN: No, Your Honor.

17 THE COURT: 10, 11, and 12 are admitted for purposes  
18 of the first day hearings.

19 (Debtors' Exhibits 10, 11, and 12 are received into  
20 evidence.)

21 THE COURT: And then let me just ask for the record:  
22 Does anyone have any questions of these three witnesses for  
23 these matters only? I'm sure these witnesses will be back  
24 for other things, but for these matters only?

25 All right. You may proceed.

1 MR. SHEEHAN: Your Honor, this --

2 THE COURT: Yes?

3 MR. SHEEHAN: Your Honor, may I just -- one question  
4 I had from the -- and I'm not sure exactly procedurally how  
5 to do this, but there -- with respect to the wage tax, the  
6 wage tax, the excise tax, which is mentioned on wages, which  
7 I believe is Mr. Owens', I had sent an email to Mr. Neligan  
8 concerning those excess tax payments and asking whether they  
9 were 4957 payments or not, which are payments -- which are  
10 penalties imposed by the IRS for payments on disqualified  
11 persons. And if they are not, I would not have any other  
12 questions.

13 THE COURT: Okay. Mr. Gaither, do you know the  
14 answer to that --

15 (Echoing.)

16 THE COURT: Do you know the answer to the question,  
17 Mr. Gaither?

18 MR. NELIGAN: Your Honor, --

19 THE COURT: Oh.

20 MR. NELIGAN: -- I have not seen Mr. Sheehan's  
21 email. I don't know if it went to my spam or when you sent  
22 it. But we can -- we can get back to you. I'll -- I can go  
23 offline and follow up with the client on that. But --

24 THE COURT: Okay. Okay.

25 MR. NELIGAN: -- I have not seen your email or known

1 that you were representing the New York AG. But, in any  
2 event, we'll be glad to follow up on that.

3 THE COURT: While we're going on the hearing -- and  
4 Mr. Sheehan, bankruptcy court does operate like this  
5 sometimes -- you all can be communicating while Mr. Gaither  
6 is proceeding on his other matters, if that's all right with  
7 you.

8 Mr. Neligan, get the --

9 MR. SHEEHAN: Thank you, Your Honor.

10 THE COURT: Get the answer to Mr. Sheehan, if you  
11 would.

12 MR. NELIGAN: Yes.

13 THE COURT: All right. Thank you very much.

14 MR. NELIGAN: Your Honor, one last point. Mr.  
15 Sheehan, if you could resend the email, I will follow up,  
16 while Mr. Gaither is handling the other matters, with the  
17 client.

18 MR. SHEEHAN: Will do. Thank you very much.

19 THE COURT: Okay.

20 MR. NELIGAN: Thank you.

21 THE COURT: All right. Mr. Gaither?

22 MR. GAITHER: Thank you, Your Honor. With respect  
23 to the questions of Mr. Owens, I would just ask that we  
24 address those when we get to the tax motion, which is last on  
25 the docket. But I think I have a -- I think I may have an

1 answer. I know it wasn't asked of me, but I think I may have  
2 an answer or a solution, because I don't think we're seeking  
3 to make those payments in the -- on -- on an interim basis,  
4 but I don't think that has to be an issue for today. So  
5 we're -- I don't think we're seeking immediate relief from  
6 Your Honor with respect to those taxes, so perhaps we can  
7 just push that issue off and work with Mr. Sheehan to address  
8 any concerns he has.

9 THE COURT: Okay. Let's take that one up last, just  
10 in case there's some communication between Neligan and  
11 Sheehan, that then they'll at least be apprised of what each  
12 other is saying. All right.

13 MR. GAITHER: Understood. Thank you very much.

14 First up on our agenda -- we did file an agenda at  
15 Document No. 27. The first matter on the agenda at Docket 2  
16 in the NRA case and Docket No. 3 in the Sea Girt case is our  
17 motion for joint administration. These cases are eligible  
18 for joint administration because Sea Girt is a wholly-owned  
19 subsidiary of the NRA.

20 We understand -- Sea Girt is the first-filed case, and  
21 under the Local Rules I understand Your Honor is the one who  
22 decides that joint administration motion. We have asked, as  
23 you might have seen in our order, that these be jointly  
24 administered under the NRA case number, which is the second-  
25 filed case, simply because that's the more publicly

1 recognizable case and we thought that made sense.

2 I will point out to the Court and you may have seen that  
3 we've been filing pleadings with -- without the judges'  
4 initials. It was our understanding from the Clerk that these  
5 cases would be both transferred to your docket, but I haven't  
6 seen that happen quite yet. And if Your Honor is inclined to  
7 grant the joint administration motion, I did want to ask the  
8 Court whether we need to include language in the proposed  
9 order that effects that transfer, or simply seek some  
10 guidance from Your Honor on that point.

11 THE COURT: Yes. I think you probably can just put  
12 language in the joint administration order that they will be  
13 handled by me.

14 MR. GAITHER: Understood. Will do.

15 THE COURT: Yes.

16 MR. GAITHER: And I took Your Honor's comments at  
17 the outset, if I heard and understood correctly, that you had  
18 received -- reviewed our revised proposed order which we  
19 entered at Docket 32-A. These incorporate a few comments,  
20 minor, I would call them nonsubstantive comments, from the  
21 United States Trustee, simply to ensure that the order  
22 complies with the local form. And unless Ms. Young wants to  
23 add anything, I think I've -- we've resolved their agreement.  
24 So we would ask that the Court enter that order on the joint  
25 administration motion.

1           THE COURT: All right. Can I make a couple of  
2 comments, and then we'll open it up to anybody else that has  
3 a comment.

4           On the redline version, on Paragraph 4, you exclude  
5 proofs of claim, schedules, statements, and monthly operating  
6 reports. And then in Paragraph 5 that contains the docket  
7 entry. And I think that the exclusion that's contained in 4  
8 needs to be in that block entry, too, probably after the word  
9 "papers" in the last sentence. Or it needs to be made  
10 consistent. Do you see that?

11           MR. GAITHER: Understood, Your Honor. I can make  
12 that change, certainly.

13           THE COURT: Yes. The second comment is more of a --

14           MR. GAITHER: I think -- I think that's correct.

15           THE COURT: Yes.

16           MR. GAITHER: The second comment is sort of a  
17 question, too, because I'm not sure what you all are trying  
18 to accomplish in this one. In Paragraph 4 it says one  
19 disclosure statement and plan of reorganization may be filed  
20 for the Debtors by any plan proponent. I'm not actually sure  
21 that's correct, like you can do that. But is it necessary to  
22 have this in this order?

23           MR. GAITHER: It's not, Your Honor. I can excise  
24 that language.

25           THE COURT: Okay. And then just so everybody on the

1 phone knows, that if a joint administration motion is filed,  
2 the cases are consolidated for administrative purposes under  
3 the lowest-numbered case. I am presiding over the lowest-  
4 numbered case, and so that's why the case will be assigned to  
5 me.

6 Which makes me then go to Paragraph 6. There aren't --  
7 there just aren't a lot of things filed in the Sea Girt case.  
8 I'm wondering if Paragraph 6 is going to be necessary, since  
9 now both cases are going to be assigned to me. What are you  
10 trying to do in 6?

11 MR. GAITHER: Your Honor, well, Your Honor, we added  
12 that at the request of the United States Trustee.

13 THE COURT: Uh-huh.

14 MR. GAITHER: I don't think there is any substantive  
15 pleading that would need to be re-docketed.

16 THE COURT: Yes.

17 MR. GAITHER: In fact, I'm -- without having checked  
18 the docket, you know, in the last hour, I'm almost certain  
19 there is. So I would defer to Ms. Young on --

20 THE COURT: Yes.

21 MR. GAITHER: -- whether they have a specific reason  
22 for asking for the inclusion of that language.

23 THE COURT: All right. The only -- we checked right  
24 before we walked out here. I think the only motion that's  
25 been filed is joint administration. Now, obviously, I'm

1 human and we may have missed something. There were some  
2 notices of appearance, but I think they were filed in both  
3 cases. So, is there -- since we know the case is coming, Ms.  
4 Young, any -- anything for 6?

5 MS. YOUNG: We had just requested that because that  
6 is what the form order that is available on the Northern  
7 District website called for.

8 THE COURT: Uh-huh.

9 MS. YOUNG: And simply put, we didn't know what  
10 other pleadings may have been filed --

11 THE COURT: Yes.

12 MS. YOUNG: -- when we were negotiating this order.  
13 So if we're -- if the Court is comfortable with taking that  
14 out, then we are comfortable with that as well. It's really  
15 -- it was really, at the time that we sent our comments over,  
16 we simply didn't know what was going to be filed in each  
17 case.

18 THE COURT: And I don't blame you. We were thinking  
19 a lot of things would be filed, and it turns out just one  
20 thing was filed in Sea Girt. So I'm comfortable taking it  
21 out, because I think the only thing that's filed in Sea Girt  
22 is the motion to jointly administer the cases.

23 And that's all I have. Anybody else have any comments on  
24 joint administration?

25 All right. From this point on, Mr. Gaither, on the

1 initials, I guess, after I've signed joint administration,  
2 and that should be sent in first, just put "hdh" on the  
3 backend of the numbers.

4 MR. GAITHER: We will do that, Your Honor. And at  
5 the risk of belaboring this, just to confirm, this will be  
6 jointly administered under the 30085 number; is that correct?

7 THE COURT: Yes. And let me just say, when I read  
8 that, I thought that was a very wise thing to do. And we've  
9 actually done that in other cases that are similar, where the  
10 case that everybody knows is not the first case. It just  
11 makes sense for the public to understand what case we're  
12 talking about. So I thought that was a good idea.

13 MR. GAITHER: Correct. Thank you. Thank you very  
14 much, Your Honor.

15 THE COURT: Okay. So that one should come in ASAP  
16 so we can then really do the other orders.

17 MR. GAITHER: We'll get right on that, Your Honor.  
18 I appreciate that.

19 THE COURT: Okay. You may proceed.

20 MR. GAITHER: The next motion on the agenda, Your  
21 Honor, is our notice of a complex case. I'm not sure if it's  
22 a motion, but a notice of complex case designation at Docket  
23 3. This case is eligible as it qualifies as a complex case  
24 because there's more than \$10 million in debt and more than  
25 50 parties in interest.

1           We would ask that the Court enter the form order  
2     designating this as a complex case.

3           But as with the joint admin motion, I had one question,  
4     perhaps two, related to the order. The form order in the  
5     Local Rules has language regarding telephonic hearings, and  
6     it specifically states that parties have to be approved --  
7     have to receive approval ahead of time to participate  
8     electronically. And given our current environment, I  
9     wondered if the Court would like us to include language  
10    either modifying that or include the Court's WebEx  
11    information so that there was no confusion there.

12           THE COURT: We have 106 people on this call alone.  
13    I think my courtroom deputy would quit me if we required  
14    everybody to ask first.

15           If you would just get with my courtroom deputy, Jenni,  
16    she probably has some language that works for you. And, you  
17    know, I think that form order was drafted before we shut down  
18    our operations live. So we'll be able to accommodate you.  
19    And yes, we're going to be doing the virtual hearings, I  
20    think, at least for a little while longer. And we do try to  
21    accommodate folks' schedules.

22           MR. GAITHER: Certainly, Your Honor. The second  
23    question I had is there is spaces for preapproved omnibus  
24    hearing dates. And I don't know if this is the time in  
25    today's proceeding to address that, but I think it does make

1 sense to maybe schedule perhaps biweekly hearings the first,  
2 you know, six weeks of the case or something.

3 THE COURT: Uh-huh.

4 MR. GAITHER: And so we're going to ask the Court,  
5 you know, right now if there's dates we should put in that  
6 order, or perhaps maybe it makes it sense to just follow up  
7 with the Court's scheduling clerk and figure out what those  
8 dates are and then submit the proposed order at that time.

9 THE COURT: Yes. We'll be able to accommodate you.  
10 And if you just get with Jenni on that, she can get you  
11 dates. And it's fine with me if you try to get some blocks  
12 of time for the first six weeks. It seems like that might be  
13 a good idea.

14 MR. GAITHER: Okay. Appreciate it, Your Honor.

15 THE COURT: Let me just say for the record: This  
16 case is a complex case and will be so designated.

17 MR. GAITHER: The next matter on the agenda, Your  
18 Honor, is at Docket 4. It's our request for an extension of  
19 time to file schedules. In our pleadings, we request an  
20 extension -- a 30-day extension on top of the 14 days. It  
21 brought us to March 1st.

22 I've spoken with Ms. Young and her office about that.  
23 They have requested that we reduce that to February 15th.  
24 And the reason for that is because they are intending to  
25 schedule the 341 meeting on February 22nd and wanted parties

1 to have sufficient time to review the schedules ahead of  
2 time.

3 We are okay with that, but what I've agreed with Ms.  
4 Young is that we will agree to the February 15th extension on  
5 an interim basis, without prejudice to our right to seek a  
6 further extension at a final hearing, at the second day  
7 hearing, basically. I think in the next few weeks we'll have  
8 a better idea of whether we'll actually need a further  
9 extension. The goal certainly will be to have those  
10 schedules done and filed by the 15th, but we wanted to  
11 reserve our rights there, and certainly all of the United  
12 States Trustee's rights to oppose that, any further request,  
13 will be reserved as well.

14 THE COURT: All right. I'm going to let Ms. Young  
15 correct you if you say something that's wrong. All right?  
16 But otherwise, keep going.

17 MS. YOUNG: That is correct, Your Honor. That does  
18 summarize correctly our agreement. And certainly we're  
19 trying to work with the Debtor to make sure that things go as  
20 smoothly as possible and they have sufficient time to get  
21 those documents filed, but also making sure that we're  
22 allowing other parties in interest to have sufficient time to  
23 review what we're assuming will be fairly voluminous  
24 schedules and Statements of Financial Affairs.

25 THE COURT: All right. I will sign that order. And

1 if you send it in, Mr. Gaither, I'll sign it as soon as I get  
2 it.

3 MR. GAITHER: Appreciate it, Your Honor.

4 Moving on, the next matter on the agenda, at Docket 5, is  
5 our cash management motion.

6 As described in the motion, the Debtors have various  
7 banks -- various accounts at various banks that serve  
8 different purposes. Their primary banking relationship,  
9 commercial banking relationship, is at Atlantic Union Bank in  
10 Virginia. That is an authorized depository in Region 4, I  
11 believe, in Virginia. It's not in the Northern District, and  
12 we are working with the United States Trustee's Office to  
13 address their concerns there. I don't know, I can't tell the  
14 Court today what the result will be of that, but we're  
15 committed to working with them. And all we're asking for  
16 today, Your Honor, is the interim authority to continue to  
17 operate our bank accounts and cash management system in the  
18 ordinary course, pending a final hearing while we work  
19 through some issues on these accounts held at non-designated  
20 or authorized depositories.

21 I think the answer is going to vary account by -- I think  
22 some accounts may be closed or moved. I think some we may  
23 have to work through with the Trustee. But we just need a  
24 little more time on that. So we've agreed to make this cash  
25 management order an interim order and keep working with the

1 Trustee, and hopefully by the second day hearing we'll have  
2 -- have that all resolved and can move forward on that, Your  
3 Honor.

4 THE COURT: Thank you.

5 MR. GAITHER: The --

6 THE COURT: Go ahead.

7 MR. GAITHER: There's a second -- yeah. Excuse me.  
8 There is a second issue -- well, it's actually two more  
9 issues.

10 Number one, counsel for Wells Fargo or potential counsel  
11 for Wells Fargo contacted me this morning and suggested that  
12 they had some comments to the proposed order. We  
13 incorporated Wells Fargo's requested language in the redline  
14 that we submitted (echoing) --

15 Sorry. Yeah. Okay. Yeah, we -- we got some feedback  
16 there. We incorporated those comments in the redline, and I  
17 did want to state on the record, because this was my  
18 agreement with their proposed counsel, that their rights with  
19 respect to the final order -- this is an interim order.  
20 We've agreed to reserve all of Wells Fargo's rights with  
21 respect to the entry of a final order to provide additional  
22 comments. They just needed a little bit more time, I think,  
23 to digest the proposed order.

24 So, want to state that for the record, that this is  
25 without prejudice to Wells Fargo's rights to send us

1 additional comments to the final order.

2 And number three, and this is a more substantive issue,  
3 Your Honor, the NRA has one or more investment accounts that  
4 are not cash bank accounts, that are more in the nature of  
5 investment accounts that may be subject to compliance with  
6 Section 345.

7 We're not asking Your Honor in this motion, on an interim  
8 or final basis, for any relief under Section 345. Frankly,  
9 the Debtors are simply in the process of trying to determine  
10 whether those accounts are already in compliance with 345 or  
11 if there needs to be some changes made or relief from the  
12 Court.

13 So what we have agreed with Ms. Young's office is that we  
14 would -- and then this is not in the redline, Your Honor,  
15 because this happened shortly before the hearing -- we were  
16 going to include a -- some language that's to be negotiated,  
17 but I think substantively we have an agreement, in the  
18 proposed interim order that addresses the fact that, to the  
19 extent there are accounts that require compliance with  
20 Section 345, this order is not providing any relief with  
21 respect to those accounts, and that there should be, and they  
22 will be, that if we need relief or to address those by  
23 separate motion, we will do so after working with the  
24 Trustee.

25 So, I just wanted to flag that issue. We're not asking

1 for any relief today, but we have agreed to include some  
2 language, some clarifying language in the interim order.

3 THE COURT: All right. Let me just ask for the  
4 record: With those changes noted, does anyone else wish to  
5 be heard on what I'll just refer to as the Cash Management  
6 Motion?

7 All right. If you send in that order, we'll take a look  
8 at it. If we have an issue, somebody from my chambers will  
9 call you and we'll set up a call with you and the U.S.  
10 Trustee. But I seriously doubt that'll happen. Let us just  
11 look at it.

12 MR. GAITHER: Thank you, Your Honor.

13 Next, at Docket No. 6 on the agenda is our -- is payroll,  
14 wages and benefits motion. As reflected in the motion,  
15 payroll is due tomorrow, January the 21st. It covers the  
16 period, the two-week period that ended on January 16th. So,  
17 naturally, there's prepetition wages being paid. We have  
18 provided a list of -- we've worked with the Trustee, provided  
19 a list of everyone who's being paid.

20 There are a couple of issues I want to point out. I  
21 think we have full agreement with the Trustee. To be clear,  
22 we're not asking that any employee receive gross pay in --  
23 or, gross wages in excess of the \$13,650 cap. I understand  
24 there was a statement in our wage motion that there might  
25 have been one exception to that. That's not currently

1 accurate. The issue was there was one employee who, with  
2 some accrued vacation, was slightly over the cap. It may  
3 have been in the -- in the three-digit -- you know, hundreds  
4 of dollars, and we thought we might pursue that. We've  
5 decided not to. So we are not seeking to pay anyone in  
6 excess of the \$13,650 cap.

7 One issue with respect to the statutory cap that has been  
8 raised by the Trustee is an issue related to some insurance  
9 benefits. I believe it's life insurance. There is an open  
10 question, I think, between myself and Ms. Young as to whether  
11 -- and not to say there's a disagreement, but we -- neither  
12 of us know the answer of whether those insurance benefits  
13 constitute wages and will be subject to the cap.

14 Without knowing, you know, in significant detail every  
15 single employee that's affected, my understanding is that the  
16 amount of those overages are very small and that the  
17 insurance premium is, again, in the hundreds of dollars.  
18 We've agreed with Ms. Young to effectively -- generally push  
19 that issue to the second day hearing so that we're not  
20 litigating that issue before the Court today.

21 I think we can get her some more information, get the  
22 U.S. Trustee comfortable that either these insurance benefits  
23 are not subject to the cap, or if they are, there can be  
24 adjustments made to the payroll so that we can address it in  
25 turn.

1 But I want to state for the record, and I've made clear  
2 to Ms. Young, and I think she will agree with this, that the  
3 Debtor and its HR department has made a substantial good-  
4 faith effort to comply with the statutory cap, and the  
5 intent, to the extent any payroll before we showed Ms. Young  
6 reflected anyone being paid in excess of that cap, was simply  
7 a misunderstanding or -- I hate to even say misunderstanding  
8 -- but a discrepancy as to whether those life insurance  
9 benefits were capped.

10 And so we'll continue to work with her, and hopefully by  
11 the second day hearing we'll have that issue resolved, Your  
12 Honor.

13 THE COURT: And let me ask you, Mr. Gaither. You  
14 all have approximately 490, almost 500 employees; is that  
15 right?

16 MR. GAITHER: Correct, Your Honor.

17 THE COURT: Okay. All right. And will they know  
18 sometime today that they're going to get paid tomorrow?  
19 Because sometimes folks worry about that.

20 MR. GAITHER: They are, and that's -- and I'll work  
21 with the client to make sure they know that. But certainly  
22 the entire point of getting this motion on file was to -- and  
23 getting it heard today was to resolve that issue. And I  
24 don't think that our agreement is going to affect the payment  
25 tomorrow.

1 But, again, that's an operational issue --

2 THE COURT: Yes.

3 MR. GAITHER: -- I'll have to work through with Ms.  
4 Young.

5 To the extent -- what I will tell Your Honor is the  
6 payroll will not be interrupted today. To the extent that  
7 there is payroll that is in process already, and any payment,  
8 including an insurance benefit, went out that puts them over  
9 the cap, I think that may be something we'd deal with after  
10 the fact and make further adjustments to make sure no one  
11 nets an amount over the cap.

12 But I think the takeaway here is that, with respect to  
13 wages, you know, which are covered by the statute, on its  
14 face there is no one that's receiving more than \$13,650  
15 tomorrow.

16 THE COURT: All right. Let me ask for the record:  
17 Does anyone else wish to be heard on the wage motion?

18 MR. SHEEHAN: Yes, Your Honor. This is, again, Jim  
19 Sheehan from the Attorney General's office.

20 Obviously, we have no objection to paying the employees  
21 their wages as appropriate. The one concern we have is  
22 Paragraph 6 of the proposed order, which allows the NRA to  
23 pay prepetition expenses consistent with its prepetition  
24 practices on reimbursable expenses.

25 And our concern here is not with the ordinary employees,

1 but with directors, officers, and key persons. In our  
2 complaint filed in August of 2020, we allege that Mr. Wayne  
3 LaPierre received significant reimbursable expense payments  
4 that had no relationship to any system or process that they  
5 had in place. These include private plane flights, transport  
6 for his niece and his wife in the private plane, expenses for  
7 other people that did not go through the ordinary  
8 reimbursement system.

9 And so the way the order is structured now, I think that  
10 the redline, it says can be paid after five days' notice to  
11 the Trustee and any Committee. What we would suggest here is  
12 that it be ten days and notice be provided to the Attorney  
13 General of the State of New York.

14 And I would say here that the NRA has admitted in its  
15 filings with us in November of 2020 that several million  
16 dollars were paid out for expenses which they're now seeking  
17 to recover from officers and directors. So we think this is  
18 necessary to protect the State and to protect the charitable  
19 interest. Thank you.

20 THE COURT: Mr. Gaither, you can react to that if  
21 you want. Do you want -- can you agree on this order to ten  
22 days and including them on notice, or do you want to think  
23 about it, or do you want me to rule on that?

24 MR. GAITHER: I don't think I want to ask Your Honor  
25 to rule. What I will -- I will react and say that the intent

1 of the order is very limited, and we've disclosed every  
2 prepetition expense that's going to be paid under this order,  
3 at least immediately, to the United States Trustee. And I  
4 think -- I would need to talk to my client on this -- it may  
5 be the case that there are no more prepetition expenses that  
6 need to be paid other than the ones that have already been  
7 disclosed during the interim period.

8 But, again, I think I need a little bit of guidance from  
9 the client with respect to the universe of the prepetition  
10 expenses.

11 I can tell you that I think the sum total of all  
12 prepetition unreimbursed expenses is \$30,000, and we are only  
13 seeking authority or have only requested authority to pay  
14 \$9,000 of those expenses, and the Trustee has signed off on  
15 that.

16 So, it seems to me that it might make sense, rather than  
17 including notice language, that we simply limit the payment  
18 of those expenses until further order of the Court,  
19 effectively to give us time us address the concerns of the  
20 NYAG and make a determination on how they want to deal with  
21 the balance of the unpaid prepetition expenses.

22 THE COURT: Mr. Sheehan, that sounds like a pretty  
23 good idea to me. Is that okay with you?

24 MR. SHEEHAN: That's fine with me, Your Honor.  
25 Thank you.

1           THE COURT: All right. Any time. Okay. Mr.  
2     Gaither, if you would upload an order. And I was going to  
3     ask you one question for the record, but you already said it,  
4     and I think the motion also says it: No one is getting paid  
5     more than the statutory cap provided in the Bankruptcy Code.  
6     Given that, if you would send in an order, I'll sign it upon  
7     receipt.

8           Now, I'm always worried about wages and people being  
9     comfortable that they're going to get paid. So, if you  
10    would, prioritize getting this order over here to me so I can  
11    sign it, hopefully sign it this afternoon.

12           MR. GAITHER: Understood, Your Honor. We'll get  
13    that to you this afternoon.

14           THE COURT: Okay.

15           MS. YOUNG: Your Honor, before we go ahead and move  
16    off of the wage motion, there was one other issue regarding  
17    --

18           MR. GAITHER: Oh.

19           MS. YOUNG: -- a potential disbursement from a  
20    retirement account that also I was hoping Mr. Gaither could  
21    address with the Court.

22           MR. GAITHER: That's correct, Your Honor. I  
23    apologize to Ms. Young. That was in my notes to address, and  
24    I did want to flag that for the Court.

25           In the payroll information that we provided with Ms.

1 Young, there was the payroll information but also a  
2 disbursement to one employee that was larger, exceeded the  
3 statutory cap. The reason for that is that it is a  
4 disbursement from a nonqualified retirement plan. Ms. Young  
5 has asked for some more detail about that. But it's the  
6 Debtors' position that, subject to further diligence, that  
7 that is -- those are trust funds, effectively, held on behalf  
8 of the employee, and that it's not a discretionary payment  
9 but simply a payment -- a disbursement of trust funds that we  
10 don't have discretion to withhold.

11 I've agreed with Ms. Young prior to the hearing, however,  
12 given the short notice and the Trustee's concern, we agreed  
13 not to make that payment. The HR department had to make a  
14 modification to the payroll processing, but as I understand  
15 it, that payment will not go out tomorrow. And so I've  
16 agreed to get Ms. Young some additional information. I think  
17 -- I am fairly confident this is something we can work  
18 through with her office, because certainly we're not -- the  
19 intent is not to pay anyone more than the statutory cap.  
20 It's just perhaps a matter of determining the true nature of  
21 the disbursement. But I'm somewhat comfortable these are  
22 trust -- retirement account trust funds, and so I think we  
23 can work that through with Ms. Young's office.

24 THE COURT: Thank you very much.

25 That brings us to tax, I think. No? Yes. To the tax

1 motion.

2 All right. Mr. Sheehan, were you and Mr. Neligan able to  
3 communicate?

4 MR. SHEEHAN: We just did, Your Honor. My  
5 understanding, he's going to reach out to his client to get  
6 more information on that issue.

7 THE COURT: Okay. All right. Mr. Gaither, why  
8 don't you go forward with your motion, and then you may be  
9 able to address something, the question that Mr. Sheehan had,  
10 too.

11 MR. GAITHER: I think I can, although I don't know  
12 the -- I don't think I can answer his question as to the  
13 nature of the payment. I think I can address his concern by  
14 saying that we're not asking for authority to make that  
15 payment under the terms of this order.

16 The -- the -- especially on an interim basis, the reason,  
17 the urgency here, the Debtor has sales and use taxes that it  
18 reports to various taxing authorities throughout the course  
19 of the year. They're due -- mostly, they're due monthly.  
20 There are some of those tax payments that are due on the 20th  
21 of the month. Those -- for this month, they would be taxes  
22 for December.

23 There's a discrepancy in our motion and in our  
24 declaration regarding the amount of the taxes, and I can  
25 explain that to Your Honor. But in the motion, we had a

1 request for authority to pay \$91,000 in prepetition sales  
2 taxes on an interim basis.

3       Since filing that motion, we learned that that  
4 undercounted some of the taxes that were due, and that's  
5 because it only -- it was based on a report that showed taxes  
6 due for the month of December. There are two jurisdictions  
7 -- that's Tennessee and Virginia -- in which, in January, a  
8 year-end tax payment is due for the entire preceding year.  
9 And so that increases the amount of prepetition taxes that  
10 are due on January 20th to approximately \$266,000. That is  
11 the \$91,000 plus -- or, roughly, the original amount plus  
12 \$86,000 that's going to be due to Tennessee and \$106,000  
13 that's due to Virginia. Those are generally taxes that  
14 relate to merchandise that's sold, online programs, printed  
15 materials, et cetera. And we agreed with the Trustee not to  
16 seek anything -- not to seek authority at this time to pay  
17 anything other than those critical sales taxes that come due  
18 in the interim.

19       And I would note that in February there will be another  
20 tax payment due that necessarily involves prepetition taxes  
21 for the period January 1 to January 15, the petition date.  
22 And so we're seeking authority to make that payment in the  
23 ordinary course. The Debtor estimates liability of something  
24 along the lines of \$200,000, but expects it would be, you  
25 know, the normal amount that it would normally pay in the

1 ordinary course.

2 THE COURT: Uh-huh. And --

3 MR. GAITHER: But just to clarify for Mr. Sheehan,  
4 the -- I don't recall how he characterized the tax payment,  
5 but on an interim basis we're not asking for authority to  
6 make the payment that he was concerned about.

7 THE COURT: Uh-huh. And the point of this motion --  
8 we see these kinds of motions in a lot of cases. It avoids  
9 quite a bit of problems that would take place if you didn't  
10 pay your prepetition taxes at the states, and also it would  
11 hurt the taxing authorities, too, by not paying them. But  
12 then there's a lot of administrative things and liens and et  
13 cetera that you're avoiding by doing this; is that -- is my  
14 understanding right?

15 MR. GAITHER: That's correct, Your Honor. And  
16 that's set forth in the motion. And this is a typical sales  
17 tax motion that you've seen in many other cases.

18 THE COURT: Yes. Mr. Sheehan, are you okay with the  
19 order, given that it does not pay those taxes now?

20 MR. SHEEHAN: Yes, Your Honor. Thank you.

21 THE COURT: Okay. Thank you.

22 For the record, does anybody else wish to be heard on the  
23 tax motion?

24 That will be granted.

25 MR. GAITHER: Thank you, Your Honor. I think that

1 brings us to the end of the agenda.

2 I did mention perhaps getting some hearing dates for you,  
3 but I think we will follow up with Ms. Bergreen separately on  
4 those, unless Your Honor wants to do that now. But I think  
5 we can certainly follow up with her.

6 THE COURT: If you would just -- I actually don't  
7 have the dates right here handy on my desk, but she will be  
8 able to give you dates. And we're happy to accommodate you.

9 I guess I want to say one thing for the record, sort of  
10 going off-script. You know, there's a lot of -- there's a  
11 lot of strong feelings, I think, in this case. And I saw the  
12 news release myself, and then saw the response by the State  
13 of New York. I would ask that everyone sort of ratchet that  
14 part of the case down some now that we're in bankruptcy  
15 court.

16 You know, bankruptcy, in some ways, is a miraculous place  
17 to be in that the debtor has an opportunity to reorganize its  
18 affairs. And then, on the other hand, for the creditors'  
19 benefit, the debtor must be one hundred percent transparent  
20 and act as a fiduciary for the benefit of creditors, which  
21 you don't always have in legal settings. So both sides get  
22 some things. So, at least from this point forward, to the  
23 extent that we can, let's treat this as a regular bankruptcy  
24 case. And I look forward, everyone that's participated this  
25 afternoon, look forward to having you in our court.

1 Mr. Gaither, if you would get those orders over,  
2 particularly the administration order and the wage order,  
3 I'll sign the orders as soon as they come to my desk.

4 MR. GAITHER: We'll get those to you very soon, Your  
5 Honor. Thank you very much.

6 THE COURT: Thank you. We'll be in recess.

7 (Proceedings concluded at 3:10 p.m.)

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CERTIFICATE

21 I certify that the foregoing is a correct transcript from  
22 the electronic sound recording of the proceedings in the  
above-entitled matter.

23 **/s/ Kathy Rehling**

**01/22/2021**

24

\_\_\_\_\_  
Kathy Rehling, CETD-444  
Certified Electronic Court Transcriber

\_\_\_\_\_  
Date

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